

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN R. JONES,)
Plaintiff,)
v.)
ELIZABETH CONLEY, et al.,)
Defendants.)
No. 4:08-CV-1115 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's filing of a post-dismissal amended complaint, which the Court has liberally construed and docketed as a motion to reopen the case and for leave to file an amended complaint [Doc. 8].

Background

On August 6, 2008, this Court dismissed plaintiff's complaint, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B) [Docs. 4 and 5]. On August 25, 2008, plaintiff filed the instant "Pro Se Amended Complaint," which the Court has liberally construed as a motion to reopen the case and for leave to file an amended complaint. In the proposed amended complaint, plaintiff, who is currently an inmate at Eastern Reception, Diagnostic and Correctional Center ("ERDCC"), seeks relief under 42 U.S.C. § 1983. Named as defendants are Correctional Medical Services ("CMS") and the following CMS employees who allegedly treated plaintiff during his incarceration at the Jefferson City Correctional Center ("JCCC") and ERDCC: Dr. Elizabeth Conley, Nurse Tymber Spray, Nurse Donita Tressner, Nurse Rhonda Walls, Dr. William Armstrong, Dr. Charles Sutherland, and Dr. Durwood Neal. Although plaintiff has not provided addresses for any of the defendants, it appears that defendants Conley, Armstrong, Sutherland, Neal, and CMS are residents of the Western District of Missouri, and that defendants Spray, Tressner, and Walls are residents of the Eastern District of

Missouri. For relief, plaintiff requests monetary relief as well an order providing him with corrective surgery, pharmacologic and medical treatment, and a specialized diet.

The Court takes judicial notice of the fact that on September 14, 2004, plaintiff previously brought an action, substantially similar to the instant case, in the United States District Court for the Western District of Missouri. See Jones v. Lamour, No. 04-4225-CV-C-NKL (W.D.Mo.). The district court in the Western District appointed counsel for plaintiff and the parties engaged in pre-trial litigation for almost two years. A jury trial was set for February 26, 2007. On August 7, 2006, plaintiff's counsel filed a motion for voluntary dismissal, without prejudice, which the Court granted on August 31, 2006. Thereafter, on August 8, 2007, plaintiff filed a motion to reopen the case and a motion for leave to proceed in forma pauperis. On September 19, 2007, the Court denied plaintiff's motions, noting that if plaintiff wanted to refile his claims, he should file a new case. On July 28, 2008, plaintiff filed the instant action in the Eastern District of Missouri, where he is now incarcerated.

Discussion

Title 28 U.S.C. § 1404(a) provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” Upon review of the proposed amended complaint, the Court notes that seven of the named eight defendants were also named as defendants in Jones v. Lamour, No. 04-4225-CV-C-NKL (W.D.Mo.). Moreover, the facts and issues asserted in the amended complaint are substantially similar to, if not identical, to those set forth in the prior Western District case. As such, the Court finds that for the convenience of parties and witnesses and in the interest of justice and judicial economy, the instant action should be transferred to the United States District Court for the Western District of Missouri. See 28 U.S.C. § 1404(a).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion to reopen the case is **GRANTED**. [Doc.

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IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue at this time, because the case is being transferred to the United States District Court for the Western District of Missouri.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file an amended complaint remains pending for resolution by the United States District Court for the Western District of Missouri following transfer. [Doc. 8]

An appropriate Order of Transfer shall accompany this Memorandum and Order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 8th day of September, 2008.